

AMENDED IN ASSEMBLY JUNE 17, 2008

AMENDED IN SENATE APRIL 15, 2008

AMENDED IN SENATE APRIL 1, 2008

SENATE BILL

No. 1546

Introduced by Senator Runner

February 22, 2008

An act to amend, repeal, and add Section 6601 of the Welfare and Institutions Code, relating to sexually violent predators.

LEGISLATIVE COUNSEL'S DIGEST

SB 1546, as amended, Runner. Sexually violent predators.

Existing law requires, prior to release from the custody of the Department of Corrections and Rehabilitation of a person who has been convicted of certain crimes of a sexual nature, the ~~secretary~~ *Secretary of the Department of Corrections and Rehabilitation* to refer that person to the State Department of Mental Health for evaluation if the secretary determines that person may be a sexually violent predator. The evaluation is to be performed by two practicing psychiatrists or psychologists, or one practicing psychiatrist and one practicing psychologist, designated by the Director of Mental Health. If both evaluators concur that the person has a diagnosed mental disorder so that he or she is likely to engage in acts of sexual violence without appropriate treatment and custody, the director shall forward a request for a petition for commitment to the applicable county. If the evaluators do not agree as to whether the person meets the criteria for a sexually violent predator, the director is required to arrange for examination by 2 independent professionals who are not employees of the state and who meet specified requirements.

This bill would specify that the psychologists or psychiatrists performing the original evaluation may be independent professionals. The bill would repeal its provisions on the date that the director executes a declaration specifying that sufficient qualified state employees have been hired to conduct the evaluations required pursuant to the bill, or January 1, 2011, whichever occurs first.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. The Legislature finds and declares all of the
2 following:

3 (a) There is within the State Department of Mental Health the
4 Sex Offender Commitment Program (SOCP). The SOCP exists to
5 implement the provisions of the sexually violent predator civil
6 commitment program (Article 4 (commencing with Section 6600)
7 of Part 2 of Division 6 of the Welfare and Institutions Code).

8 (b) The sexually violent predator civil commitment program
9 requires clinical evaluations of potential sexually violent predators
10 for possible commitment in order to provide treatment, as well as
11 to protect California's citizens from possible victimization by
12 sexually violent predators.

13 (c) Persons referred to the SOCP by the Department of
14 Corrections and Rehabilitation as possible sexually violent
15 predators and who meet the preliminary screening criteria must
16 undergo precommitment evaluations by at least two professionals
17 who meet the requirements specified in Section 6601 of the Welfare
18 and Institutions Code.

19 (d) It is difficult for the state to recruit and retain individuals
20 with the required expertise within the civil service.

21 (e) Evaluations must be conducted in a timely manner to avoid
22 the release into society of possible sexually violent predators.

23 (f) It is the intent of the Legislature to ensure the protection of
24 California's residents by providing the State Department of Mental
25 Health with the necessary flexibility in obtaining experienced
26 professionals, both within the civil service and through contracts,
27 so that sexually violent predator evaluations can occur within the
28 statutory timeframe.

SEC. 2. Section 6601 of the Welfare and Institutions Code is amended to read:

6601. (a) (1) Whenever the ~~Director of Corrections~~ *Secretary of the Department of Corrections and Rehabilitation* determines that an individual who is in custody under the jurisdiction of the Department of Corrections and Rehabilitation, and who is either serving a determinate prison sentence or whose parole has been revoked, may be a sexually violent predator, the ~~director~~ *secretary* shall, at least six months prior to that individual's scheduled date for release from prison, refer the person for evaluation in accordance with this section. However, if the inmate was received by the department with less than nine months of his or her sentence to serve, or if the inmate's release date is modified by judicial or administrative action, the ~~director~~ *secretary* may refer the person for evaluation in accordance with this section at a date that is less than six months prior to the inmate's scheduled release date.

(2) A petition may be filed under this section if the individual was in custody pursuant to his or her determinate prison term, parole revocation term, or a hold placed pursuant to Section 6601.3, at the time the petition is filed. A petition shall not be dismissed on the basis of a later judicial or administrative determination that the individual's custody was unlawful, if the unlawful custody was the result of a good faith mistake of fact or law. This paragraph shall apply to any petition filed on or after January 1, 1996.

(b) The person shall be screened by the Department of Corrections and Rehabilitation and the Board of Parole Hearings based on whether the person has committed a sexually violent predatory offense and on a review of the person's social, criminal, and institutional history. This screening shall be conducted in accordance with a structured screening instrument developed and updated by the State Department of Mental Health in consultation with the Department of Corrections and Rehabilitation. If as a result of this screening it is determined that the person is likely to be a sexually violent predator, the Department of Corrections and Rehabilitation shall refer the person to the State Department of Mental Health for a full evaluation of whether the person meets the criteria in Section 6600.

(c) The State Department of Mental Health shall evaluate the person in accordance with a standardized assessment protocol, developed and updated by the State Department of Mental Health,

1 to determine whether the person is a sexually violent predator as
2 defined in this article. The standardized assessment protocol shall
3 require assessment of diagnosable mental disorders, as well as
4 various factors known to be associated with the risk of reoffense
5 among sex offenders. Risk factors to be considered shall include
6 criminal and psychosexual history, type, degree, and duration of
7 sexual deviance, and severity of mental disorder.

8 (d) Pursuant to subdivision (c), the person shall be evaluated
9 by two practicing psychiatrists or psychologists, or one practicing
10 psychiatrist and one practicing psychologist, designated by the
11 Director of Mental Health, one or both of whom may be
12 independent professionals as defined in subdivision (g). If both
13 evaluators concur that the person has a diagnosed mental disorder
14 so that he or she is likely to engage in acts of sexual violence
15 without appropriate treatment and custody, the Director of Mental
16 Health shall forward a request for a petition for commitment under
17 Section 6602 to the county designated in subdivision (i). Copies
18 of the evaluation reports and any other supporting documents shall
19 be made available to the attorney designated by the county pursuant
20 to subdivision (i) who may file a petition for commitment.

21 (e) If one of the professionals performing the evaluation pursuant
22 to subdivision (d) does not concur that the person meets the criteria
23 specified in subdivision (d), but the other professional concludes
24 that the person meets those criteria, the Director of Mental Health
25 shall arrange for further examination of the person by two
26 independent professionals selected in accordance with subdivision
27 (g).

28 (f) If an examination by independent professionals pursuant to
29 subdivision (e) is conducted, a petition to request commitment
30 under this article shall only be filed if both independent
31 professionals who evaluate the person pursuant to subdivision (e)
32 concur that the person meets the criteria for commitment specified
33 in subdivision (d). The professionals selected to evaluate the person
34 pursuant to subdivision (g) shall inform the person that the purpose
35 of their examination is not treatment but to determine if the person
36 meets certain criteria to be involuntarily committed pursuant to
37 this article. It is not required that the person appreciate or
38 understand that information.

39 (g) Any independent professional who is designated by the
40 Secretary of *the Department of Corrections and Rehabilitation* or

1 the Director of Mental Health for purposes of this section shall not
2 be a state government employee, shall have at least five years of
3 experience in the diagnosis and treatment of mental disorders, and
4 shall include psychiatrists and licensed psychologists who have a
5 doctoral degree in psychology. The requirements set forth in this
6 section also shall apply to any professionals appointed by the court
7 to evaluate the person for purposes of any other proceedings under
8 this article.

9 (h) If the State Department of Mental Health determines that
10 the person is a sexually violent predator as defined in this article,
11 the Director of Mental Health shall forward a request for a petition
12 to be filed for commitment under this article to the county
13 designated in subdivision (i). Copies of the evaluation reports and
14 any other supporting documents shall be made available to the
15 attorney designated by the county pursuant to subdivision (i) who
16 may file a petition for commitment in the superior court.

17 (i) If the county's designated counsel concurs with the
18 recommendation, a petition for commitment shall be filed in the
19 superior court of the county in which the person was convicted of
20 the offense for which he or she was committed to the jurisdiction
21 of the Department of Corrections. The petition shall be filed, and
22 the proceedings shall be handled, by either the district attorney or
23 the county counsel of that county. The county board of supervisors
24 shall designate either the district attorney or the county counsel to
25 assume responsibility for proceedings under this article.

26 (j) The time limits set forth in this section shall not apply during
27 the first year that this article is operative.

28 (k) If the person is otherwise subject to parole, a finding or
29 placement made pursuant to this article shall toll the term of parole
30 pursuant to Article 1 (commencing with Section 3000) of Chapter
31 8 of Title 1 of Part 3 of the Penal Code.

32 (l) Pursuant to subdivision (d), the attorney designated by the
33 county pursuant to subdivision (i) shall notify the State Department
34 of Mental Health of its decision regarding the filing of a petition
35 for commitment within 15 days of making that decision.

36 (m) (1) The department shall provide the fiscal and policy
37 committees of the Legislature, including the Chairperson of the
38 Joint Legislative Budget Committee, and the Department of
39 Finance, with a semiannual update on the progress made to hire
40 qualified state employees to conduct the evaluation required

1 pursuant to subdivision (d). The first update shall be provided no
2 later than July 10, 2009.

3 (2) On or before January 2, 2010, the department shall report
4 to the Legislature on all of the following:

5 (A) The costs to the department for the sexual offender
6 commitment program attributable to the provisions in Proposition
7 83 of the November 2006 general election, otherwise known as
8 Jessica's Law.

9 (B) The number and proportion of inmates evaluated by the
10 department for commitment to the program as a result of the
11 expanded evaluation and commitment criteria in Jessica's Law.

12 (C) The number and proportion of those inmates who have
13 actually been committed for treatment in the program.

14 (3) This section shall remain in effect and be repealed on the
15 date that the director executes a declaration, which shall be
16 provided to the fiscal and policy committees of the Legislature,
17 including the Chairperson of the Joint Legislative Budget
18 Committee, and the Department of Finance, specifying that
19 sufficient qualified state employees have been hired to conduct
20 the evaluations required pursuant to subdivision (d), or January 1,
21 2011, whichever occurs first.

22 SEC. 3. Section 6601 is added to the Welfare and Institutions
23 Code, to read:

24 6601. (a) (1) Whenever the Secretary of the Department of
25 Corrections and Rehabilitation determines that an individual who
26 is in custody under the jurisdiction of the Department of
27 Corrections and Rehabilitation, and who is either serving a
28 determinate prison sentence or whose parole has been revoked,
29 may be a sexually violent predator, the secretary shall, at least six
30 months prior to that individual's scheduled date for release from
31 prison, refer the person for evaluation in accordance with this
32 section. However, if the inmate was received by the department
33 with less than nine months of his or her sentence to serve, or if the
34 inmate's release date is modified by judicial or administrative
35 action, the secretary may refer the person for evaluation in
36 accordance with this section at a date that is less than six months
37 prior to the inmate's scheduled release date.

38 (2) A petition may be filed under this section if the individual
39 was in custody pursuant to his or her determinate prison term,
40 parole revocation term, or a hold placed pursuant to Section 6601.3,

1 at the time the petition is filed. A petition shall not be dismissed
2 on the basis of a later judicial or administrative determination that
3 the individual's custody was unlawful, if the unlawful custody was
4 the result of a good faith mistake of fact or law. This paragraph
5 shall apply to any petition filed on or after January 1, 1996.

6 (b) The person shall be screened by the Department of
7 Corrections and Rehabilitation and the Board of Parole Hearings
8 based on whether the person has committed a sexually violent
9 predatory offense and on a review of the person's social, criminal,
10 and institutional history. This screening shall be conducted in
11 accordance with a structured screening instrument developed and
12 updated by the State Department of Mental Health in consultation
13 with the Department of Corrections and Rehabilitation. If as a
14 result of this screening it is determined that the person is likely to
15 be a sexually violent predator, the Department of Corrections and
16 Rehabilitation shall refer the person to the State Department of
17 Mental Health for a full evaluation of whether the person meets
18 the criteria in Section 6600.

19 (c) The State Department of Mental Health shall evaluate the
20 person in accordance with a standardized assessment protocol,
21 developed and updated by the State Department of Mental Health,
22 to determine whether the person is a sexually violent predator as
23 defined in this article. The standardized assessment protocol shall
24 require assessment of diagnosable mental disorders, as well as
25 various factors known to be associated with the risk of reoffense
26 among sex offenders. Risk factors to be considered shall include
27 criminal and psychosexual history, type, degree, and duration of
28 sexual deviance, and severity of mental disorder.

29 (d) Pursuant to subdivision (c), the person shall be evaluated
30 by two practicing psychiatrists or psychologists, or one practicing
31 psychiatrist and one practicing psychologist, designated by the
32 Director of Mental Health. If both evaluators concur that the person
33 has a diagnosed mental disorder so that he or she is likely to engage
34 in acts of sexual violence without appropriate treatment and
35 custody, the Director of Mental Health shall forward a request for
36 a petition for commitment under Section 6602 to the county
37 designated in subdivision (i). Copies of the evaluation reports and
38 any other supporting documents shall be made available to the
39 attorney designated by the county pursuant to subdivision (i) who
40 may file a petition for commitment.

1 (e) If one of the professionals performing the evaluation pursuant
2 to subdivision (d) does not concur that the person meets the criteria
3 specified in subdivision (d), but the other professional concludes
4 that the person meets those criteria, the Director of Mental Health
5 shall arrange for further examination of the person by two
6 independent professionals selected in accordance with subdivision
7 (g).

8 (f) If an examination by independent professionals pursuant to
9 subdivision (e) is conducted, a petition to request commitment
10 under this article shall only be filed if both independent
11 professionals who evaluate the person pursuant to subdivision (e)
12 concur that the person meets the criteria for commitment specified
13 in subdivision (d). The professionals selected to evaluate the person
14 pursuant to subdivision (g) shall inform the person that the purpose
15 of their examination is not treatment but to determine if the person
16 meets certain criteria to be involuntarily committed pursuant to
17 this article. It is not required that the person appreciate or
18 understand that information.

19 (g) Any independent professional who is designated by the
20 Secretary of the Department of Corrections and Rehabilitation or
21 the Director of Mental Health for purposes of this section shall not
22 be a state government employee, shall have at least five years of
23 experience in the diagnosis and treatment of mental disorders, and
24 shall include psychiatrists and licensed psychologists who have a
25 doctoral degree in psychology. The requirements set forth in this
26 section also shall apply to any professionals appointed by the court
27 to evaluate the person for purposes of any other proceedings under
28 this article.

29 (h) If the State Department of Mental Health determines that
30 the person is a sexually violent predator as defined in this article,
31 the Director of Mental Health shall forward a request for a petition
32 to be filed for commitment under this article to the county
33 designated in subdivision (i). Copies of the evaluation reports and
34 any other supporting documents shall be made available to the
35 attorney designated by the county pursuant to subdivision (i) who
36 may file a petition for commitment in the superior court.

37 (i) If the county's designated counsel concurs with the
38 recommendation, a petition for commitment shall be filed in the
39 superior court of the county in which the person was convicted of
40 the offense for which he or she was committed to the jurisdiction

1 of the Department of Corrections and Rehabilitation. The petition
2 shall be filed, and the proceedings shall be handled, by either the
3 district attorney or the county counsel of that county. The county
4 board of supervisors shall designate either the district attorney or
5 the county counsel to assume responsibility for proceedings under
6 this article.

7 (j) The time limits set forth in this section shall not apply during
8 the first year that this article is operative.

9 (k) If the person is otherwise subject to parole, a finding or
10 placement made pursuant to this article shall toll the term of parole
11 pursuant to Article 1 (commencing with Section 3000) of Chapter
12 8 of Title 1 of Part 3 of the Penal Code.

13 (l) Pursuant to subdivision (d), the attorney designated by the
14 county pursuant to subdivision (i) shall notify the State Department
15 of Mental Health of its decision regarding the filing of a petition
16 for commitment within 15 days of making that decision.

17 (m) This section shall become operative on the date that the
18 director executes a declaration, which shall be provided to the
19 fiscal and policy committees of the Legislature, including the
20 Chairperson of the Joint Legislative Budget Committee, and the
21 Department of Finance, specifying that sufficient qualified state
22 employees have been hired to conduct the evaluations required
23 pursuant to subdivision (d), or January 1, 2011, whichever occurs
24 first.